

Letter of Findings: 04-20120228
Sales and Use Tax
For the Year 2008

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax – Agricultural Exemptions.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer protests the assessment of tax on his purchases of tangible personal property.

STATEMENT OF FACTS

Taxpayer, an Indiana farmer, purchased a chopper (also called "bush hog") to be used on his farm to chop corn stalks in the fields. Pursuant to an audit, the Indiana Department of Revenue ("Department") discovered that Taxpayer did not pay sales tax at the time of the purchase nor did Taxpayer self-assess and remit use tax to the Department. As a result, the Department assessed Taxpayer additional tax and interest.

Taxpayer timely protests the assessment and submitted additional documentation to support his protest. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Agricultural Exemptions.

DISCUSSION

The Department's audit assessed Taxpayer use tax on his purchases of tangible personal property because Taxpayer did not pay sales tax at the time of the transactions, nor did he self-assess and remit the use tax to the Department. Taxpayer, to the contrary, claimed that he is entitled to the agricultural exemption found in IC § 6-2.5-5-2.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. Generally, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. [45 IAC 2.2-5-6\(a\)](#). An exemption from use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 100-101.

IC § 6-2.5-5-2 states:

(a) Transactions involving **agricultural machinery, tools, and equipment** are exempt from the state gross retail tax if the person acquiring that property acquires it for his **direct use in the direct production**, extraction, harvesting, or processing **of agricultural commodities**.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

[45 IAC 2.2-5-1\(a\)](#) further provides:

Definitions. "Farmers" means only those persons **occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale**.

These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a

profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities"

requires that the property in question must have an immediate effect on the article being produced.

Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity. (Emphasis added).

[45 IAC 2.2-5-4](#), in relevant part, further illustrates:

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.

Food for non-exempt horses, ponies, etc.

Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.

Field tile or culverts.

Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).

Any replacement parts or accessories for the above items.

(d) Each of the following items is considered **exempt from the sales tax ONLY** when the purchaser is occupationally engaged in agricultural production and **uses** the items **directly in direct production of agricultural products**.

EXEMPT TRANSACTIONS

(1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.

(2) Feed and medicines sold for livestock and poultry described in Item (1).

(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.

(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

(5) Milking machines, filters, strainers, and aerators.

(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.

(7) Grease and repair parts necessary for the servicing of exempt equipment.

(8) Containers used to package farm products for sale.

(9) Equipment designed to haul animal waste.

(10) Equipment such as needles, syringes, and vaccine pumps.

(e) **The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic] tax. It must be directly used by the farmer in the direct production of agricultural products.**

The property in question must have an **immediate effect on the article being produced**. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. **The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt. (Emphasis added).**

In this instance, Taxpayer, in relevant part, states:

I operate a farm as part of my profession and the equipment purchased in question for sales tax was a bush hog. I use this bush hog to mow corn stalks and pasture. Both tasks are essential in the direct production of

my cattle operation. By mowing the stalks the cattle can eat them better and by mowing the pasture a better quality of grass is grown for consumption.

Thus, Taxpayer believes that he is entitled to the agricultural exemptions on the purchase of the chopper/bush hog.

Taxpayer may argue, and rightly so, that mowing corn stalks and pasture is essential to his cattle operation. However, pursuant to the above mentioned statutes and regulations, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable, unless the use of the tangible personal property satisfies the "double-direct" test; i.e., the equipment at issue must be involved in the direct production of the agricultural commodity and must have a direct effect upon that commodity. In this instance, Taxpayer explained that he leases a portion of his farm to a third party (tenant) who plants the corn and that Taxpayer used the chopper to chop the corn stalks after his tenant harvested the corn. Thus, Taxpayer used the chopper to chop the corn stalks after the harvest of the corn, which is post-production of the agricultural commodity owned by his tenant. Additionally, Taxpayer explained that, unlike his tenant, he raises cattle for human consumption; thus, upon chopping the corn stalks, Taxpayer then used the chopped stalks to make bedding for his cattle. Therefore, Taxpayer's use of the chopper also did not have a direct effect upon his cattle.

Since Taxpayer did not pay sales tax at the time of the purchase, the use tax is properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 08/29/2012 by Legislative Services Agency

An [html](#) version of this document.